

Basant Lal.                      Versus                      State of Rajasthan  
 & ors.

S.B. Civil Writ Petition No. 5902/1993

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Date of Order: May 11, 2007

**HON'BLE MR. JUSTICE H.R. PANWAR**

Mr.M. Mridul, Senior Advocate, with Mr. R.N. Upadhyaya, for the petitioner.

Mr. B.L. Tiwari, Deputy Government Advocate, for respondents.  
Mr. S.L. Jain, for the respondent No.3.

**BY THE COURT:**

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks to declare that the post, to which the appointment made was and is required to be filled in by appointment being given to a Scheduled Caste candidate and the appointment given to Shri P.B.L. Mathur by order dated 30-11-1993 may be declared invalid and the same be quashed; and also to direct the respondents to give appointment to the petitioner on the post of Assessor House Tax on and from 30-11-1993 with all consequential benefits such as emoluments, seniority etc.

The facts and circumstances giving rise to the instant

writ petition are that the petitioner claims himself to be a member of scheduled caste, having Graduation in Arts (B.A.) in the year 1978, the Diploma in Local Self Government in the year 1986 and Diploma Course in Assessor in the year 1986. The petitioner acquired these qualifications while he was in service. The petitioner is holding the post of Lower Division Clerk on substantive capacity with effect from 5-6-1976 with the respondent No.2. He came to know that there existed two vacant posts of Assessor . In the year 1969, one post of Assessor was available, to which one Raghupati Singh Baid was came to be appointed by direct recruitment, however, in the year 1976, he resigned and, therefore, the post fell vacant and one Kailash Chandra Sharma was appointed on the said post. It is also stated that one Narsingh Das was appointed to the post in question by promotion given to him in the year 1975 and thereafter one Raja Ram Bishnoi, on being transferred, filled the post of Assessor in the year 1983-84. In the year 1989, Narsingh Das retired and one post of Assessor became vacant. For all these years, not even a single scheduled caste/scheduled tribe candidate has been appointed to the post whereas 40% Roster System was prevalent till 1985. In the meanwhile, 100 Point Reservation Roster System came into force vide order dated 9-7-1985 providing a system, by which the posts are to be filled in. It has further been stated that the respondent No.3,

who was a substantive Lower Division Clerk, filed SBCWP No. 3154/1989 stating therein that there is one vacant post of House Tax Assessor with the respondent No.2 and the same is not being filled up by the respondents and, therefore, he sought a direction. The said writ petition succeeded and this Court made a direction that the respondent Municipal Council, Bikaner, who is respondent No.2 herein, shall determine the vacancies in terms of rule 10 of the Rajasthan Municipal (Ministerial and Subordinate) Service Rules, 1963 (for short, "the Rules 1963" hereinafter) and fill up the post of Assessor in accordance with law. It was further directed that in case the petitioner has by now become over-age, then the case of the petitioner should be considered as because of the failure of the respondents not to determine the vacancies and make the recruitment, petitioner should not be placed in disadvantageous position. It was further directed that the vacancies should be determined in accordance with law and recruitment should be made within a period of 3 months from the date of the order passed by this Court. It was further directed that the vacancy is required to be filled up by taking resort to 100 Point Roster System to give appointment to the members of Scheduled Caste and Scheduled Tribes. According to the learned counsel for the petitioner, the said post should have gone to the member of scheduled caste. It has also been stated that in pursuance of the order of this Court in

SBCWP No.3154/1989 filed by respondent No.3 herein, selection process commenced and the selection on the post of Assessor was made by direct recruitment. On 18-11-1993, the petitioner, respondent No.3 and Mohan Kumar Sharma, Budhmal Purohit and three others viz. Jitendra Mathur, Prabhu Prakash Mathur and Virendra Kumar Mathur, whose names were sponsored by the Employment Exchange were interviewed. The in-service candidates could not be informed and, therefore, they were called for interview on 30-11-1993 and interviewed. The respondent No.2 selected respondent No.3 and then appointed him vide order dated 30-11-1993. So far as petitioner has come to know, whereas he obtained 78 marks as against 133 obtained by Shri P.B.L. Mathur, 118 obtained by Manoj Kumar Sharma and 102 obtained by Manohar Singh, 97 obtained by Shri A.K. Acharya and 93 obtained by Budhmal Purohit and the rest of the candidates secured the marks less than the petitioner.

Separate replies to the writ petition have been filed by the respondents No.2 and 3. Respondent No.2 Municipal Council, Bikaner, the employer, stated that the respondent No.3 was initially appointed on ad hoc basis as Assessor under rule 27 of the Rules 1963 for one year or till regularly selected candidate is made available by the Commission, whichever is earlier. A contempt petition was filed by the respondent No.3 seeking compliance of the order passed by this Court in the writ petition

filed by him, as noticed above. It has been stated that the Roster System is available; there are only two sanctioned post with the respondent No.2 Municipal Council, one has already been filled up by giving promotion to Narsingh Das who is also a member of scheduled caste, though he retired on 31-7-1989 and, therefore, the post was carried forward.

The contesting respondent No.3, in his reply, contended that there are two sanctioned posts of Assessor and as per the Rules 1963, the posts are to be filled up by the ratio of 50:50 by direct recruitment and by promotion. One Narsingh Das was working from April 1982 till 31.7.1989 on the promotional post, however the post of direct recruitment could not be determined by the respondent Municipal Council and, therefore, the respondent No.3 filed the aforesaid writ petition before this Court and in pursuance of the order dated 7-10-1991 passed by this Court, the respondent No.2 Municipal Council called the names from the Employment Exchange, a Selection Committee was constituted and after undergoing the selection process as per the provisions of rule 27 of the Rules 1963, vide order dated 30-11-1993, the respondent No.2 selected and appointed respondent No.3 against 50% posts to be filled by direct recruitment. Out of two posts, only one post was meant for direct recruitment which has been filled by the respondent No.3 as he was a successful candidate. It has further been

stated that there was one post of direct recruitment and, therefore, that cannot be reserved for the candidates belonging to scheduled caste/scheduled tribe and, therefore, since there was only one post, therefore, it could not be filled up by applying 40% Roster System or 100 Point Reservation System. It has also been stated that vide order Annx.R/1, the respondent Municipal Council categorically stated that the respondent No.3 has been appointed against the direct recruitment vacancy by following the roster system; the order Annx.R/2 makes it clear that there is only one post vacant and, therefore, in compliance of the directions of this Court in the writ petition filed by the respondent No.3 dated 7-10-1991, the selection process was held and the respondent No.3 was found meritorious amongst others who have faced the selection process, as noticed above.

Learned counsel for the petitioner submits that the respondent No.2 has not acted upon in conformity with the decision of the Hon'ble Supreme Court in *Indra Sawhney etc. etc. Vs. Union of India & ors.*, AIR 1993 SC 477; and *R.K. Sabharwal & ors. Vs. State of Punjab & ors.*, AIR 1995 SC 1371.

Learned counsel for the respondent No.3 submits that the controversy involved in the instant writ petition came to be concluded by a Division Bench decision of this Court in *Prem Bihari Lal Mathur Vs. The State of Rajasthan & ors.*, 2004 (2) Western Law Cases (Raj.) 669, wherein the respondent No.3

herein was a petitioner and while considering his case, the Division Bench of this Court held that there being only one vacancy, the question of it being reserved for any particular category was de hors the Constitutional mandate as it amounted to 100% reservation.

The background of the case, in which the Division Bench of this Court considered the matter in Prem Bihari Lal Mathur's case (supra) is that in pursuance of the SBCWP No.3154/1989, the respondent No.3 was given appointment and after one year, his services were terminated on the ground that the appointment was purely on temporary basis for a year. Respondent No.3 herein again filed D.B. Civil Writ Petition No.277/1995. The respondent No.2 Municipal Board, Bikaner challenged the order passed by the learned Single Judge in the earlier writ petition filed by the respondent No.3 herein, being SBCWP No.3154/1989 decided on 7-10-1991. The Division Bench of this Court, vide order dated 7.10.1996, has ordered that SBCWP No.277/95 be heard along with this appeal, which was the second writ petition filed by the petitioner for the like reliefs. The Division Bench noticed that in writ petition No. 3154/1989, the Court has found as a fact that vacancy against direct quota for 1982 was not filled by the Department and the operative part of the order dated 7-10-1991 reads as under:-

"Therefore, in the facts and circumstances of this

case the writ petition is allowed and it is directed that the respondents shall determine the vacancies in terms of Rule 10 of the Rules of 1963 and fill the post of the Assessor in accordance with law. In case petitioner has by now become over-age, then the case of the petitioner should be considered as because of the failure of the respondents not to determine the vacancies and make the recruitment, petitioner should not be placed in disadvantageous position. The vacancies should be determined in accordance with law and recruitment should be made within a period of 3 months from today."

The Division Bench observed that it is clear that direction was to determine the vacancies in terms of rule 10 and fill the post of Assessor in accordance with law. In the context of controversy raised and decided it relates to determination of vacancy for direct recruitments and for recruitments against such vacancies, the Court has itself found that against quota of 1982 vacancy, no recruitment was made. While the order passed on 10.8.1994 speaks about giving promotion to petitioner and not to temporary appointment upto December 1994 as if the petitioner was regularly promoted. The direction was to determine the year-wise vacancy for direct recruitment on the post of Assessor or make recruitment against such post by not placing petitioner at a disadvantageous position indicates consideration for regular appointment against permanent post by direct recruitment. Yet it was not stated that appointment was only for a period to expire shortly. The question of reservation also came to be considered by the Division Bench and as noticed

above, the Division Bench, in clear terms, held that there being only one vacancy, the question of it being reserved for any particular category was de hors the constitutional mandate as it amounted to 100% reservation. On these premises, the order terminating the services of the respondent No.3 came to be quashed and set aside and it was directed that the respondent No.3 herein shall be treated to have been directly recruited by regular procedure against a permanent vacancy on regular basis and all consequential benefits shall flow as if the respondent No.3 continued on the post having been appointed regularly.

On these premises, learned counsel for the respondent No.3 submits that there being only one post and that post has been filled up by appointing the respondent No.3 after following the procedure and respondent No.3 being meritorious, as noticed above, in the selection process, therefore, the appointment of the respondent No.3 cannot be questioned by the petitioner as the same has been affirmed by the Division Bench.

In the prayer clause, the petitioner clearly seeks a direction for declaring the order appointing the respondent No.3 as illegal. The appointment of the respondent No.3 came to be examined by this Court, as referred hereinabove, and after considering the entire material and facts relevant to issue writ, in my view, the relief claimed by the petitioner cannot be allowed as there being only one vacancy, the question of it being

reserved for any particular category is de hors the constitutional mandate as it amounts to 100% reservation. The decisions relied on by the learned counsel for the petitioner turn on their own facts and are not applicable to the factual-matrix and law point involved in the instant writ petition.

It was lastly contended by the learned counsel for the petitioner that a direction be issued to the respondents to get a supernumerary post created and appoint the petitioner thereon treating the supernumerary post as reserved for the members of scheduled caste. I am afraid, such a prayer cannot be accepted without there being any procedure provided for such creation of a post.

In this view of the matter, I do not find any merit in the writ petition and it is dismissed accordingly. There shall be no order as to costs.

(H.R. PANWAR), J.

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